

November 22, 2004

Important Information!
Please distribute to your Title I
Director and School Principal

TO: Title I Chief School Administrators
Title I Charter School Lead Persons

FROM: Isaac Bryant, Assistant Commissioner
Division of Student Services

SUBJECT: Public School Choice Requirement for “Year 2” Schools in Need of Improvement
Under the *No Child Left Behind Act of 2001*

The *No Child Left Behind Act of 2001* (NCLB) is described as a landmark in education reform. It was crafted to enhance federal efforts to support education at all levels. The law is based on ensuring that all students achieve academic proficiency by 2014. As such, it presents states with numerous challenges in implementing the robust provisions of this legislation.

NCLB has four main pillars: accountability at all levels, parental involvement and options, flexibility, and research-based instructional programs and strategies. To fulfill the mission of NCLB, New Jersey has adopted a single accountability system. It requires all students to be tested for proficiency and for schools and districts, including their student subgroups, to meet prescribed targets to achieve adequate yearly progress (AYP). When a school misses AYP in the same content area (language arts literacy or mathematics) for two consecutive years, it is identified as a school in need of improvement. *All* New Jersey schools are accountable for making AYP; however, schools that receive Title I funds, must comply with certain federally mandated sanctions if they miss AYP. These mandated sanctions include school choice and supplemental educational services.

Recently, the Office of Title I Program Planning and Accountability held three regional technical assistance sessions to help Title I schools newly identified for improvement understand the implications of the NCLB requirements. The targeted schools were those in their first year of school improvement status, that is, “Year 2 – Schools in Need of Improvement.” This letter is to clarify some issues related to the provision of public school choice and/or supplemental educational services as required by the United States Department of Education (USDOE) under the provisions of NCLB. Following is a chart that summarizes the school improvement continuum in New Jersey.

School Improvement Continuum Chart

Year	Status	Sanctions for Title I Schools
Year 1	Early Warning – Did not make AYP for one year	None
Year 2	First year of school in need of improvement status. Did not make AYP for two consecutive years in the same content area.	Public school choice, school improvement plan, technical assistance from district.
Year 3	Second year of school in need of improvement status. Did not make AYP for three consecutive years in the same content area.	Public school choice, supplemental educational services, school improvement plan, technical assistance from district.
Year 4	Third year of school in need of improvement status – corrective action . Did not make AYP for four consecutive years in the same content area.	Public school choice, supplemental educational services, school improvement plan, technical assistance from district and state, corrective action, participation in CAPA.
Year 5	Fourth year of school in need of improvement status – school restructuring plan . Did not make AYP for five consecutive years in the same content area.	Public school choice, supplemental educational services, school improvement plan, technical assistance from district and state, development of restructuring plan.
Year 6	Fifth year of school in need of improvement status – implementation of restructuring plan . Did not make AYP for six consecutive years in the same content area.	Public school choice, supplemental educational services, school improvement plan, technical assistance from district and state, implementation of restructuring plan.

School Choice

The USDOE has issued guidance to help states interpret the requirements for schools in need of improvement. *Public School Choice Non-Regulatory Guidance* (February 6, 2004), available at www.ed.gov/policy/elsec/guid/schoolchoiceguid.doc, is very clear about the responsibility of a Title I school in need of improvement offering parents the option to transfer their child to another school that is not in improvement status. In item E-7 of this guidance, the USDOE states (underscore added for emphasis):

“An LEA may not use lack of capacity to deny students the option to transfer but may take capacity into consideration in deciding which choices to make available to eligible students [34 C.F.R. 200.44(d)].”

The guidance reiterates a school’s responsibility in offering choice, as item E-7 continues (underscores and italics added for emphasis):

“The bottom line, then, is that every student enrolled in a Title I school in improvement who wishes to transfer to a school that is not in need of

improvement must have that opportunity. Moreover, an LEA's provision of a priority to the lowest-achieving eligible children does not diminish the requirement for the LEA to provide choice to *all* students in its Title I schools that are in school improvement status. Thus, if an LEA does not have sufficient capacity in its schools that are not identified for improvement (or as persistently dangerous) to accommodate the demand for transfers by all eligible students, the LEA must create additional capacity or provide choices of other schools."

Developing Choice Capacity

To address the capacity issues within a district to accommodate the choice option, item E-8 provides the following guidance (*italics added for emphasis*):

"When capacity is an issue, school officials will need to employ creativity and ingenuity in creating capacity in schools to receive additional students. The range of possible options *might* include:

- Reconfiguring, as new classrooms, space in receiving schools that is currently not being used for instruction;
- Expanding space in receiving schools, such as by reallocating portable classrooms within the district;
- Redrawing the district's attendance zones, if insufficient capacity is available within the existing zones within which students would ordinarily select schools;
- Creating satellite divisions of receiving schools, that is, classrooms that are under the supervision of the receiving school principal and whose teachers are part of the school faculty but that exist in neighboring buildings;
- Creating new, distinct schools, with separate faculty, within the physical sites of schools identified for improvement;
- Encouraging the creation of new charter schools within the district;
- Developing distance learning programs, or entering into cooperative agreements with "virtual schools";
- Reshaping long-range capital construction and renovation plans in order to ensure that schools that are likely to receive new students have additional space;
- Modifying either the school calendar or the school day, such as through "shift" or "track" scheduling, in order to expand capacity; and
- Easing capacity by initiating inter-district choice programs with neighboring LEAs or even by establishing programs through which local private schools can absorb some of the LEA's students."

The district is not restricted to this list, but may exercise other ideas to provide choice options.

The guidance continues (E-13) to clarify when a district might offer interdistrict transfers, if available (underscores and italics added for emphasis):

“A *limited* number of LEAs may have no schools available to which students can transfer. This situation might occur when all schools at a grade level are in school improvement or when the LEA has only a single school at that grade level. It may also occur in some States where an LEA’s schools are so remote from one another that choice is impracticable. For example, if the only other elementary school is over 100 miles away, then choice is likely impracticable. On the other hand, if other potential elementary school choices are located outside an LEA-defined attendance zone or internal boundary, these boundaries may not be used to prevent student transfers.

In these cases, the LEA must, to the extent practicable, enter into cooperative agreements with other LEAs in the area (or with charter and “virtual schools” in the State) that can accept its students as transfers [Section 1116(b)(11)]. The LEA may also wish to offer supplemental services to students attending schools in their first year of improvement who cannot be given the opportunity to change schools [34 C.F.R. Section 200.44(h)(2)].”

Supplemental Educational Services Option

When all options to provide school choice have been exhausted and there is valid justification as to why this option was not offered, supplemental educational services may be offered, as stated above. (Under prescribed NCLB sanction levels, supplemental educational services would be available during the second year of school improvement—year 3 on the School Improvement Continuum Chart on page two of this letter.) Additional USDOE guidance, *Supplemental Educational Services Non-Regulatory Guidance* (August 22, 2003), available at www.ed.gov/policy/elsec/guid/suppsvcsguid.doc, uses stronger language regarding the use of supplemental educational services in lieu of school choice (A-3) (italics added for emphasis):

“In very limited circumstances, where choice is not possible, LEAs are *encouraged* to consider offering supplemental educational services during the first year of school improvement. When both options are available, parents have the choice of which option they would prefer for their child.”

Schools that offer choice may also offer supplemental educational services during the first year of improvement—year 2.

“An LEA may give students enrolled in schools in their first year of improvement the opportunity to obtain supplemental educational services, so long as they also offer those students the opportunity to change schools. (See B-11.)

Title I Funds for School Choice and Supplemental Educational Services

Districts receiving Title I funds must use a portion of these funds to implement the school choice and supplemental educational services options. In providing the choice option during the first year of improvement (year 2), a school district must set aside at least 20 percent of its Title I allocation to offer transportation services to those students whose parents request that their child be transferred to another school that is not identified as “in need of improvement” or “persistently

dangerous.” Districts that can justify offering supplemental educational services in lieu of choice in the first year of improvement (year 2) must use the set-aside, or reserved funds, for these services. In the second year of improvement (year 3), the required reserve (at least 20 percent) is split between choice transportation (at least 5 percent) and supplemental educational services (at least 5 percent). To forego choice in year 3 and subsequent years, a district must annually address the same capacity-building requirements mentioned above under “Developing Choice Capacity.”

Local Laws and School Choice

Local transfer prohibitions do not take precedence. The Public School Choice guidance (E-10) states that “Title I requirements supersede local laws and local school board policies that limit school choice and are inconsistent with the requirement to provide the option to transfer to all students enrolled in schools identified for improvement, corrective action, or restructuring.”

Consultation

Decisions regarding the availability of public school choice and supplemental educational services must be made in consultation with the chief school administrator, the district’s NCLB consolidated application committee, and the district’s board of education. A checklist is attached that will help guide all efforts to provide choice opportunities.

Refusal of Title I Funds

Districts continue to have the option to refuse Title I funds. These districts would then be considered non-Title I districts. Although non-Title I districts are not required to apply the NCLB sanctions, they are still accountable under New Jersey’s Single Accountability System to ensure that their schools make AYP. Accountability will be monitored through the annual evaluation of schools and ultimately the New Jersey Quality Single Accountability Continuum (NJQSAC).

We hope the citations provided in this memo help to clarify the choice requirements of NCLB. We wish you success in the administration of these requirements for Title I schools that are in their first year of improvement (year 2). The NJDOE continues to be available to answer your questions and consult with you on implementing the NCLB choice options. Please contact your NJDOE regional office, county office, or the Title I Office. For more information on Title I and NCLB, please refer to the Title I Web site: <http://www.state.nj.us/njded/title1/program/>.

IB/SO/em

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